PRESENTATION
TO THE
PARLIAMENTARY COMMITTEE
ON
EQUALITY RIGHTS
BY
THE SOCIAL PLANNING COUNCIL
OF METROPOLITAN TORONTO

SEPTEMBER, 1985

ISBN #0919456-05-7
CUPE #1777

950 YONGE ST.
10TH FLOOR
TORONTO, ONT.
M4W 2J4

$5.00

TABLE OF CONTENTS

1. INTRODUCTION..... 1

2. GENERAL ISSUE..... 5

   - A Question of Human Rights..... 5

3. SUBSTANTIVE ISSUES..... 8

   - Equality Rights and Immigrants 8

   - Equality Rights and Age Discrimination..... 13

   - Equality Rights and Sexual Orientation..... 17

4. PROCEDURAL ISSUES..... 22

5. RESOURCE ISSUES..... 23

   - On-Going Dialogue Required..... 23

   - 'Genuine' Participation by the Citizenry Must be Encouraged..... 24

6. CONCLUSION..... 28

7. SPECIFIC RECOMMENDATIONS..... 29

8. REFERENCES..... 32

EQUALITY RIGHTS WORKING GROUP
OF THE SOCIAL PLANNING COUNCIL OF METROPOLITAN TORONTO

CHAIRMAN: JOHN KENEWELL,
COUNSEL, CANADIAN FOUNDATION
FOR CHILDREN AND THE LAW
(JUSTICE FOR CHILDREN)

MEMBERS:

- REV. DENNIS DRAINVILLE,
  EXECUTIVE DIRECTOR,
  STOP 103
  AUTHOR, POVERTY IN CANADA.
  COMMISSIONED BY THE PRIMATE
  OF THE ANGLICAN CHURCH IN
  CANADA.

- DR. KENISE KILBRIDE,
  DEPARTMENT OF SOCIOLOGY,
  RYERSON POLYTECHNIC.

- MARILOU MCPHEDRAN
  HEALTH ADVOCATE, CITY OF
  TORONTO DEPARTMENT OF
  PUBLIC HEALTH

- NANCY NICHOLLS
  EXECUTIVE DIRECTOR,
  CATHOLIC IMMIGRATION BUREAU
  OF TORONTO

STAFF: DR. ROBERT DOYLE
SENIOR PROGRAM DIRECTOR
SOCIAL PLANNING COUNCIL
OF METROPOLITAN TORONTO

PRESENTATION TO THE COMMITTEE ON EQUALITY RIGHTS

BY

SOCIAL PLANNING COUNCIL OF METROPOLITAN TORONTO

Mr. Chairman and Members of the Committee,

We are pleased to have the opportunity to present our views on equality rights to your Committee.

The Social Planning Council of Metropolitan Toronto is a citizens organization, established over 45 years ago, with the following objectives:

- to facilitate active citizen involvement in the analysis of social issues, the development of social policies and delivery of human services.
- to exercise an independent voice in encouraging and assisting public and privateorganizations, community groups and individuals to develop social policies and services.

The Social Planning Council (SPC) has an enviable record over the years in promoting social and economic development for Metro citizens through programs of social research, policy analysis and advocacy, organization and services development, and community education.

This Committee may be interested in a number of projects which we have undertaken or which are being implemented. Firstly, the SPC and the Urban Alliance on Race Relations have published two research reports related to racial discrimination in the work place. A large scale, systematic study, "Who Gets the Work"(1) gave concrete evidence of some ways in which non-whites are denied equal access to employment. The results clearly indicate that there is very substantial discrimination affecting the ability of members of racial minority groups to find employment.

A second study, entitled No Discrimination Here? Toronto Employers and the Multi-Racial Workforce(2) surveyed 199 employers representing all sectors of the Metropolitan Toronto economy regarding management perspectives on discrimination and management of the multi-racial workforce. Findings suggest that current personnel procedures provide significant opportunity for discrimination, particularly in recruitment, and that little effort has been made to implement race-related policies that may either discover the existence of or prevent discrimination. It also found evidence of individual prejudice and organizational discrimination. The findings of the employer survey imply a need for broad policy changes in the race and employment area.

We are in the early stages of a project, supported by the Secretary of State for Multiculturalism, which will examine how non-governmental human service organizations provide access to members of diverse cultural and racial groups in Metropolitan Toronto. The project will document the level of participation as well as barriers to access within human service organizations for

members of such groups. This community-wide study is the first of its kind in Metropolitan Toronto, and will serve to determine useful measures and strategies for improving access to human service organizations for members of diverse cultural and racial groups.

The current work of the Social Planning Council does not end there. We have also established a Human Rights and Justice Program, directed at promoting social justice, enabling people to have full access to organizations, benefits, programs, services and opportunities, and to exercise their legal and democratic rights.

On April 19, 1985, only 2 days after the Equality Rights provisions of the Charter of Rights and Freedoms came into effect, the SPC sponsored (in association with the Canadian Council on Social Development), a conference on the Charter and its "Implications for Human Services" (3). This conference, supported by the Human Rights Directorate of the Secretary for State, was attended by over 250 persons representing human service organizations, the legal profession and government.

The conference was not only a timely event, but for the first time on such a scale brought together representatives of community organizations, government and the legal profession to consider how the Charter of Rights and Freedoms may be used to advance issues of equality. We believe that it is vital that community groups and organizations become informed and involved in protecting and advancing their rights as they are defined in

the Charter. Unless the community is involved, the law becomes a sterile instrument which can be used and interpreted only by the legal profession and governments. If the Charter is to be a progressive instrument for ensuring equality rights, it requires informed and effective action by all interests in the Canadian mosaic.

You may be interested to know that the conference participants saw the need for a variety of strategies for 'equality-seekers' to use to achieve equal rights in Canada. It is important that there is support for public education and lobbying activities, as well as litigation.

Litigation is expensive,and is particularly so for many of the community organizations which serve disadvantaged populations. There isas yet no real evidence that the Courts in Canada are prepared to take positive steps to protect and extend rights, and mandate affirmative solutions. Community groups will need access to funds from government to enable them to bring cases forward based on Charter arguments.

And because litigation is expensive and should not be the option of choice in all circumstances, public education is necessary to develop strategies other than litigation. People must not simply be expected to assume what their rights are; they must know and demand them. Public awareness about the Charter and its implications is necessary for people to be able to effectively exercise their rights.

We would like to present our concerns related to general issues,

substantive issues, procedural and resource issues. We will not comment on all areas of the Federal Discussion Paper due to our own limited resources.

GENERAL ISSUES

Like others, we have a lot of questions concerning the Charter of Rights and Freedoms:

- While it has the potential for impact on our lives, will it be an instrument for advancing social justice and our quality of life?
- Can we have equality as defined in section 15, unless we have the legal rights (defined in section 7), and the constellation of other rights (including economic and social rights), enforced by the courts and acknowledged by public authorities?
- Will it be necessary to carry out litigation to ensure our rights or will they be ensured without costly and time-consuming litigation?
- Will the Charter be a bonanza for the legal profession and a bust for the disadvantaged, who don't have the means to litigate and lack the resources required to negotiate the ways to exercise their full rights?

Much needs to be done to ensure that the Charter is not simply another opportunity to ensure equality in Canada, but is a living reality of the equality we have achieved.

A QUESTION OF HUMAN RIGHTS

The point to be remembered in any consideration of civil rights, of which constitutionally guaranteed rights are presumably the most important, is that they are either clearly human rights or a protection thereof. The right to life is usually the first right guaranteed by governments simply because we are by our nature

living beings. Ancillary rights - to trials by our peers, to access to lawyers, etc., become necessary when our fundamental rights to life or liberty seem in need of such protection, particularly in complex societies.

But also exceedingly important is the realization that in such complex societies, fundamental rights and freedoms will only be truly protected when the entire citizenry is educated both on the nature of these rights and how they are to be exercised.

Cases of sexual and ethnic equality may serve to illustrate this. As society evolved past the point where the economic system alone determined our understanding of the worth of human life, we built in legal safeguards for the poor as well as the rich -- obviously not so many or so strong as we need, but social class alone no longer determines access to the law.

However, we also came in this society, to an acknowledgement that physical, cultural, and other such differences are no less invalid a basis for determining human rights. And so gradually (or glacially), the human rights of women, ethnic groups and others, came to be protected, to some extent, as acknowledged rights (for instance, women legally became "persons" and could exercise the right to self-determination through the ballot, and so forth).

The gap between a theoretical acknowledgement of equality in law and the actualization of it in society remains large, however. It seems clear that the government has a responsibility to its citizens beyond the making and enforcing of laws. For human

rights to be truly realized, our society must pass from merely legal protection to informed understanding; and for this, its educational systems are more useful.

But what has a central government to say to educational institutions, in a country where provinces are expected to assume a primary responsibility for education?

It is our educational institutions which most formally and immediately socialize our children but it is the government which most often articulates the central, common vision of the society, and then funds, to a large extent, the schools which present it.

Besides teaching our children to sing "O Canada", therefore, it is to be hoped that the schools will teach them the Canadian understanding of equality, as it is found in the most enlightened consensus we have developed. There are segments of the society which believe, for instance, that wives and girlfriends are the property of husbands and boyfriends, to be dealt with as they see fit. It would be important that this thinking should be offset by a thorough presentation in the schools of the differences between 'sex' and 'gender', and of the harm, the unfairness to both sexes, of gender stereotypes. Until these false stereotypes are renounced, people will continue to believe in and practice inequality, and the goals of equality presented in the Constitution will not be realized.

SUBSTANTIVE ISSUES

We would like to address some substantive issues dealing with the following areas of concern:

- o Equality Rights and Immigration
- o Equality Rights and Age Discrimination
- o Equality Rights and Sexual Orientation

EQUALITY RIGHTS AND IMMIGRATION

Our Immigration Act itself states that "any person who seeks admission to Canada on either a permanent or temporary basis is subject to standards of admission that do not discriminate on grounds of race, national, or ethnic origin, colour, religion, or sex." Questions arise as to how the Charter's statement of already cited grounds and its broader implications could and or should be reflected in the Immigration Act.

As outlined in the Act, the following groups are considered for landing:

1. Family Class (e.g., close relatives who are sponsored by a permanent resident or Canadian Citizen)
2. Assisted Relatives (e.g., nephews, nieces,and others who can be admitted by obtaining a lesser level in the point system than independent applicants).
3. Independent Applicants (point system)
4. Refugees

Broader Concerns:

When discussing issues related to immigration and the Charter it is crucial to note the present discriminatory aspects of our

Immigration Act 1976 as they relate to "race, national or ethnic origin, colour, religion, sex, age or mental or physical disability".

In order to be accepted as a landed resident in Canada an individual must 'score' on a point system. This system favours individuals with higher levels of education, with certain skills and abilities, (work, language) and thus can be said to discriminate against those who are less educated and trained. Inherent in the point system is a bias toward individuals from higher socio-economic status groups (individuals who in other countries have greater opportunities to obtain higher education). In many instances women and members of certainracial orethnic groups are denied access to higher education and opportunities and are disadvantaged in the competition for landed residency.

Financial considerations play an important role in considerations for admission and favour those with greater economic security.

Refugee applicants are considered on the basis of their potential for satisfactory settlement in Canada. Potential for satisfactory settlement is arbitrary and much discretion is left to officals. Application of the Act in general is often left to the discretion of immigration officials.

A major factor which is not accounted for on the Charter's list of grounds are questions related to family and maritial status. Since a major portion of our immigration flow is family sponsorship, definitions and distinctions related to family and marital status are significant. Some ethnic groups define a

family unit as the nuclear family. Often individuals are not allowed to sponsor family members who they deemed as closest to them, as these members do not qualify as immediate family members.

Disability

A major discriminatory element of the Immigration Act is the fact that admission to Canada is subject to standards that discriminate on grounds of disability. For example a person is deemed to be a member of the inadmissible class if the individual is

> "suffering from any disease, disorder, or disability or other health impairment which as a result of the nature, severity, or probable duration would, in the opinion of a medical officer concurred in by at least one other, be a danger to public health or safety, or his or her admission would cause or might reasonably be expected to cause excessive demands on health or social services." (4)

Within general guidelines there is much discretion and confusion with regard to categorizing disabilities. Although the point system does not apply to family sponsorship groups or refugees per se, the disability criteria applies to all groupings.

Incidents have occurred where refugee families have been denied access because of a handicapped family member. Even when the Federal government agrees to consider an applicant who has a physical handicap, any province can determine that the individual poses too great a burden on provincial health and social services and admission to Canada can be denied. What constitutes too great a burden varies from province to province and is often

based on discretionary judgements of civil servants. Disability criteria is most restrictive when it is applied to mental health.

The United Nations High Commissioner for Refugees has asked Canada and other countries to consider admitting handicapped refugees especially those in camps in South East Asia, and one can question that discrimination based on disabilities conflicts both with Charter rights and Canada's legal obligation to the international community.

It is doubtful that one could apply the Charter to areas that are of concern outside of Canada; nevertheless, the Immigration Act and the regulations and procedures governing it should not be in conflict with the broader protections of the Charter. Since a major component of our immigration flow is concerned with family sponsorship (family class/assisted relatives/family reunification of refugees), much of the Charter relates directly to areas inside our borders.

Sexual Discrimination

Concern arises when discussing 'sponsored dependents' as most in this category are women and thus enter Canada in a dependent relationship with their husband rather than as equal partners. If for any reason, the husband decides not to continue assuming responsibility for his wife within the ten year period, the woman's position is vulnerable. In cases involving newly married couples it is often the woman, as a sponsored immigrant, who waits for landing from the Immigration Commission and thus could be deported if the marriage breaks down. Many women remain in

abusive situations out of fear of deportation. Even after landing, women fear that they are not economically self-sufficient and fear reprisals especially when husbands threaten not to continue to assume responsibility for them even though they are not likely to be deported. Since the only reason for deportation is willfully failing to support oneself, women often remain in abusive relationships out of fear and lack of knowledge of their rights.

This situation applies to women more than men, as women seldom sponsor husbands, and statistically women are more often victims of abuse than men in marital relationships.

In the event of breakdown and application for General Welfare Assistance, a woman must be able to prove sponsorship breakdown. This situation again creates further vulnerability for the woman if financial status, intentions, or whereabouts of the husband are unknown. A letter stating sponsorship breakdown has occurred is necessary for obtaining welfare benefits and assisted rental housing.

One other example of sexual discrimination in the Act is that fathers of illigitimate children cannot sponsor their children unless they adopt the child; whereas mothers of illegitimate children can sponsor an illegitimate child. This section discriminates against men on a sexual basis.

Another area of concern vis-a-vis sexual discrimination are the outlined procedures for domestic workers program. Domestic workers can become vulnerable to various forms of abuse by their

employers and often face inequalities in both immigration prospects and labour protection.

Refugee Levels

Major questions will arise as to whether or not refugee levels determination can be viewed as discriminatory on the basis of national/ethnic origin as areas for non-discrimination already outlined in the Act. It can also be questioned if the setting of levels, especially with regard to refugees, is of itself discriminatory. One can question for example, that higher levels for Easter European and lower levels for Central American, are more a reflection of foreign and external policy shifts and alliances than world need or suitability to adapt to Canada.

EQUALITY RIGHTS AND AGE DISCRIMINATION

> "Age-ism, like racism and sexism, is a way of pigeon-holing people and not allowing them to be individuals with unique ways of living their lives." (5)

At the centre of Equality Rights stands the issue of quality of life. When people are discriminated against, for whatever reason, they are denied the opportunity to live their lives to the fullest. In effect, they are robbed of their creativity and potentiality so that they are unable to enrich their own lives or alter the society around them. They become dependents.

There is much discrimination in our society against people over the age of 65. It is a deep rooted discrimination which calls into question the very value of their humanity. To be over 65 means to be 'sick', 'slow', 'lazy', 'limited'; in short, it means

to be dependent on family, friends and the state. These understandings spring from the images that are repeated without end in the media. We live at a time when youth is everything and age is nothing. To be alive means to be wealthy and young. To be old means to be useless and worn out. This negative attitude towards the older members of our society is so pervasive that it has become a part of our general understanding as a society.

Maintaining this attitude flies in the face of all the new data that show us that Canadians over the age of 65 are a vibrant and creative group of people.

> "Discrimination against people because of their advanced age is blatantly present in our mandatory retirement policies." (6)

In 1979, the Special Senate Committee on Retirement Age Policies made its final report entitled Retirement Without Tears (7). It made the following recommendations:

1. that the progressive abolition of mandatory retirement based on age become a general policy

   a) by amendments to the rules governing public servants and employees of companies under the jurisdication of the federal government.

   b) by similar action with respect to provincial and municipal public servants.

2. that the mandatory age of retirement be increased one year at a time for five years by amending pension plans or retirement rules or conventions and that at the end of five years the concept of mandatory retirement at a particular age be abandoned completely.

3. that all human rights legislation be reviewed to eliminate any loopholes which permit age discrimination because of employee benefit and similar plans.

4. that a policy of flexible retirement become the standard for both public and private enterprises.

5. that amendments to both federal and provincial human rights legislation be sought at the earliest opportunity to minimize the possibility of discrimination based on age.

The Senate report documented and showed how discrimination was widespread in government programs and policies with regard to people over 65 years of age.

It is widely accepted that mandatory retirement is discriminatory and violates human rights and the dignity of people. We agree with the National Adivsory Council on Aging which has recommended a flexible age, rather than a mandatory age, retirement policy. The single most important reason why people don't want to be forced to retire is economic. Not many people in Canada can afford to retire. Nearly half of Canada's "over 65" citizens are currently living below the poverty line. Canada's elderly represent 9.8 percent of the general population and 42 percent of the poor population.

Health and Welfare Canada, in a report, 1982:11 (8) states that the reason most seniors have financial problems is because they are dependent on pensions for their livelihood. As it stands right now, the pension allowances established by the government of Canada are totally inadequate to provide a reasonable standard of living during retirement years.

Women over 65 tend to suffer the most due to economic deprivation. This situation has largely evolved because of the

historical and social position of women in Canadian society before the Second World War. The traditional understanding of the role of women was safe-guarded by husband and family. Women did not move in great numbers into the workforce until well after the Second World War. Between 1961 - 1981 the proportion of women in the work force increased from 30 to 63 per cent.

Today in the 1980's, women over 65 suffer from two kinds of discrimination: they are women and they are also over 65 years. When they reach the present age of seniority they will have little security. We know that their pensions will be considerably smaller because their earnings over the years will be limited due to the period of time when they raised a family. Many (up to one-third) will also have been employed in part time work and thus they will have been paid less and will not have received many, if any, employee benefits. Also, most women do not private pension plans.

The result of these factors is that women over 65 are penalized in their senior years for having raised families and taken on part time jobs. The Senate Committee (1979) also made specific recommendations with regards to women and pensions in Canada which need to be repeated:

1. That the federal and provincial governments and the pension industry be urged to make it obligatory for private pension schemes to provide adequately for survivors.

2. that the reciprocal and equal sharing of pensions under the Canada/Quebec Pension Plan be adopted as the best method of providing pensions for housewives, andthat the equal sharing of any pension entitlements earned by either spouse during any period of marriage should

confirm the fact that marriage has some of the essential qualities of a partnership;

3. that the rules which bar women employed by their husbands in unincorporated enterprises from contributing to the Canada/Quebec Pension Plan be eliminated;

4. that any unfair discrimination against women in the pension field not based on accepted and sound actuarial principles should be vigorously attacked by the provincial and federal authorities responsible for human rights. (9)

We understand that federal-provincial consultations have made progress toward agreement on some of these issues. The issues must be kept on the public agenda for resolution.

Let there be no doubt, if there is to be a bright and purposeful future for our senior citizens in Canada it will have to be brought to realization through the efforts of all Canadians. The government must give leadership in this area. The years after 60 can and should be the best for people who have given their support and shared their lives in the building of our nation. the words of the poet Robert Browning speak to us of an attitude and philosophy towards aging which is both positive and hopeful:

" Grow old along with me!
The best is yet to be,
The last of life,
For which the first was made. "

EQUALITY RIGHTS AND SEXUAL ORIENTATION

The view that section 15 of the Charter extends its protection on an equal basis to all people deserves the support of the Government of Canada. Where unjustified discrimination is based on grounds not enumerated in section 15, the Federal Government

should act to eliminate that discrimination just as it proposes to act with respect to the enumerated grounds.

The major non-enumerated ground of discrimination identified by the discussion paper is discrimination on the basis of sexual orientation. The discussion paper indicates that discrimination in general may be in conflict with the Charter where distinctions are based on "stereotypes or other unwarranted ideas about the characteristics of the category of person concerned". Further, even where the discrimination has a valid objective, it might not be justified where means other than ones that infringe equality rights are available to achieve the objective.

In our opinion, sexual orientation has been historically, and is presently, used as an unjustified category for discrimination. As such, it is an unenumerated ground that deserves protection of section 15 of the Charter and an appropriate government response. Sexual orientation as an unjustified ground for discrimination has been recognized by the Government of Quebec and the Human Rights Commissions of Canada and Ontario.

There is no doubt that gay people have historically been discriminated against. Within our lifetime, many homosexuals were interned in concentration camps in Nazi Germany and thousands died there. Until 1969, the Criminal Code in Canada classified homosexual acts as criminal. Amendments to the Criminal Code have to date only created an exemption for consenting adults both 21 years of age or over.

The Ontario Human Rights Commission in its 1977 report, Living Together, states that:

> "... people in Ontario who are homosexuals live in constant fear that they may lose their jobs, their living accommodation, and other basic necessities, if their sexual orientation becomes known. As things now stand, this can and often does happen despite the fact that the individuals concerned may be exemplary employees or tenants. They are being discriminated against because of something which is part of their private life."(10)

Present discrimination against gay persons may still be found in the Criminal Code. In particular, heterosexual relations are regulated by the Criminal Code only up to age 18, while homosexual acts are regulated up to age 21. Recently, the Report of the Committee on Sexual Offences Against Children and Youth, (the Badgley Report) (11) supported a uniform age of 18 years old for sexual autonomy. As well, government benefits available to the public are sometimes not available to gay persons. For example, benefits available to "common-law" spouses are not equally available to gay persons in long-standing relationships.

The discussion paper focuses on one type of anti-gay discrimination - that of the Canadian Armed Forces. It is not our purpose to address all the objections that have been raised relating to the eligibility of gay persons for the Canadian Forces. We believe, however, that if those objections are closely examined, they reveal justifications that are based on (a) permitting existing prejudices to validate continued discrimination, or (b) unjustified assumptions about the integrity, impulsivity and other personal attributes of a class of persons, or (c) assumptions that may be valid but are equally valid for a wider class of persons who are not disadvantaged or

are dealt with on an individual basis.

The Canadian Forces are first concerned about the possibility of posting gay service personnel to a foreign country, whose laws or social mores proscribed homosexual conduct. Where such conduct is contrary to the laws of a foreign country, it cannot be assumed that gay service personnel would be unable or unwilling to obey those laws. As well, where a particular foreign posting raises practical problems for the placement of openly gay service personnel, it would be possible to deal with the problem on an individual case basis. Selection for a specific assignment is made or denied on a variety of bases; there is no need to deny a class of individuals eligibility for service on the basis of one specific selection criterion.

The second reason advanced by the Canadian Forces is disruption to efficiency. This disruption is said to come in part from physical attacks on homosexuals. This raises the question of whether prejucice among others is a reasonable basis for discrimination. For example, if there is racial or religious bigotry and violence in Canada, should minorities be excluded from the Canadian Forces? We think it is evident that discrimination cannot be based upon assumed prejudical public attitudes.

Other related concerns about efficiency may be based on the possibility that emotional relationships may occur between persons of the same sex. The same concerns to the same degree could be expressed about men and women serving together in the

Canadian Forces. Yet there is increasing evidence that men and women in the Canada Forces and in police forces can serve together effectively. There is no reason to assume that gay persons are any more likely to be unable to control their sexuality in situations where personal privacy is difficult or impossible than non-gay persons, or any more likely to allow emotional attachments to interfere with their efficiency as Canadian Forces personnel.

The third reason advanced by Canadian Forces is that gay persons are subject to blackmail and thus are a security risk. Fear of exposure would, however, be eliminated if criminal and disciplinary sanctions did not exist. Certainly the detrimental impact of present policies cannot be used to justify those very policies. Fears that even openly gay personnel are subject to 'indirect' blackmail are based on the unwarranted assumption that openly gay persons have more things to hide about their lives than non-gay personnel or are more inclined to have their sexual orientation exploited than non-gay personnel.

Finally, it would be particularly offensive to the spirit of the Charter to attempt to justify discrimintion on the basis of public morality or majoritarian values. Apart from the difficult task of determining what those values are at any particular time, the very purpose of an anti-discrimination section of the Charter is to protect minorities from discrimination based on prejudice and antipathy and to indicate that all persons are presumed to be of equal moral status.

It is recommended that the Charter be interpreted to protect persons from discrimination on the basis of sexual orientation; the federal government should act to reverse the systemic pattern of discrimination against gay persons.

PROCEDURAL ISSUES

The recent Conference on the Charter and Human Services, which we noted above, confirmed a widespread belief and acceptance that the Charter BELONGS to everyone in Canada. It is not, nor should it be the exclusive property of the legal profession, the judiciary and legislators.

Citizens must be given easy access, to informationabout their rights, to the courts, and opportunities to suggest appropriate remedies where their rights have been violated.

It is important that citizens are not disadvantaged in coming to the courts to seek equality. Citizen access to the courts and litigation opportunities should not be determined on the basis of financial resources.

We believe that STANDING must be given to certain groups in the human services to bring actions as primary actors, because people whose rights are being affected are not always in the position to pursue litigation.

And when an action has been brought, we believe that INTERVENORS are needed in cases where they have an interest in the issue raised.

The people we deal with in the human services are often disadvantaged, as are their organizations and special interest gorups who serve them. These disadvantages limit the possibility of necessary legal activity and litigation. We must ensure that the courts are not institutions which further alienate disadvantaged persons and organizations.

RESOURCE ISSUES

The question of resources is linked intimately with that of access and procedure.

It is important first of all, that your Parliamentary Committee see itself as a resource for ensuring that steps are taken in Canada to achieve the equality that the Charter enshrines. We believe, for example, that the Federal government must develop mechanisms for monitoring the distributive effects of its policies and programs. It should not just be concerned with ensuring that Federal laws conform to the Charter provisions.

AN ON-GOING DIALOGUE REQUIRED

In the discussion paper, Equality Issues in Federal Law it was proposed that a dialogue be 'opened', and that the discussion paper should serve 'as the basis for consultation with the people of Canada' (page 2).

It is our contention, shared by a wide variety of community organizations across Canada, that the dialogue has not just been opened, but has been going on for a long period of time, serviced

by a variety of special committees, commissions and reports. We need only to mention the Report of the Special Committee on Participation of Visible Minorities in Canadian Society - Equality Now! published in March 1984. That report noted that 'the demand for full participation is not a recent phenomenon, but one which has gained momentum in the past twenty years, and that government must now consciously choose to remove all roadblocks preventing the full participation of all citizens in the cultural, social economic and political life of the country'.(12)

The Federal Government must continue to provide regular opportunities and structures through which such dialogue can continue. Special Parliamentary Committees serve as one mechanism for regularizing the process of more open government, but other mechanisms must be found. Such mechanisms need to be found outside the normal processes of government in holding public hearings and consulting citizens through committees and task forces. The Federal Government also needs to encourage and support the development and establishment of community-based organizations and programs concerned with the constitution and social development, which would provide relevant advice to governments, and carry out necessary functions related to public education on the constitution.

'GENUINE' PARTICIPATION BY THE CITIZENRY MUST BE ENCOURAGED

It is also our contention that it is time for government not just to 'hear' but to 'heed' demands for full participation by

Canadian citizens, including visible minorities, the poor, and other disadvantaged in our present society. Citizens must not only be consulted so that they 'feel' they have participated in decisions, they must also genuinely participate in decisions by having real opportunities to influence these decisions which have impact on their daily lives. One way in which this Special Committee can demonstrate that government is genuinely heeding the informed advice of citizens is to address the content and recommendations of earlier Committes and Commissions. This would show that government is serious about its consultation with citizens, that it genuinely wishes to heed citizens advice, and that there is some continuity with the past. For example, your Committee should make some recommendations, including implementation and monitoring plans, for assuring that the recommendations of the Royal Commission on Employment Equity are implemented. The SPC Report, No Discrimination Here? cited above, notes a number of policy implications, including:

- o requirements for regular monitoring of the impact of personnel systems on racial minorities
- o taking a systems approach to address problems of systemic discrimination, including implementing mandatory programs to improve employment equity at the organizational level
- o development of race-related training programs
- o regular monitoring to assess changes in participation of racial minorities within firms and within the society as a whole. (13)

What we are now dealing with is not simply a new series of issues, but some intractable problems which have not yet been dealt with satisfactorily as we seek to achieve equality in our society. Some solutions have been advanced for dealing with

these problems, and these solutions have not been sufficiently dealt with on the public agenda.

EQUALITY REQUIRES GREATER ACCESS TO RESOURCES

The achievement of our equality rights in Canada will require greater attention to ensuring that all Canadians have resources to enable them to participate fully in efforts to secure these rights. We agree with the Canadian Council on Social Development in its submission to your Committee that:

> "the Government provide the appropriate level of resources to ensure the public's access to the Constitution. Anything less could lead to the accusation that the Constitution is available primarily to support the interests of the wealthy in society. This will require support for litigation and other activities. Present funding for such acceptance is not adequate. In this regard, we urge the government to take into account the competence and effectiveness of the voluntary sector in realizing this form of accessibility." (14)

One way of providing necessary resources is to make funds available to community organizations for litigation in matters which relate to social development issues vis-a-vis the Charter of Rights and Freedoms. However, as the SPC's Conference on "the Charter: Implications for Social Policy and Services" concluded, government should also support public education efforts by community organizations, to inform citizens of their rights and freedoms, to encourage them to consider how the Charter relates to these rights and freedoms, and how it may be an instrument for greater democracy and social justice.

Public education initiatives may take the form of publications,

workshops and conferences, research, and other means. Our experience in holding the conference showed that there is as yet little understanding of the Charter, including Section 15, among human service professionals, agencies and community organizations. If the Charter is to be an instrument not simply for the legal profession and the judiciary to interpret our rights and freedoms, it is necessary for government to support initiatives which will give wider access for the public to the provisions and protections of the Charter. There is an awakening interest in the voluntary sector that the achievement of human services goals could be assisted by the law. Legal strategies are being included by voluntary sector organizations in efforts to promote social development. But much more needs to be done.

The Social Planning Council sponsored Conference ended with the expression of commitment from more than one third of the participants to follow-up activity regarding the Charter and human services issues. Subsequent meetings of these participants have led to the consideration of longer-term arrangements for cooperative activity by voluntary sector organizations in using the Charter for social development. In Metropolitan Toronto, it is conceivable that an Action Network on the Charter and Human Services will evolve as a way for interested people and organizations to pursue cooperative and coordinated activity on Charter issues, emphasizing strategies other than litigation to ensure equality rights. Ways must be found to support organizations and other kinds of cooperative activity which stress functions such as information and referral, technical

assistance and public education. We do not as yet in Canada have sufficient infrastructure in place to ensure that our social development interests can be advanced through the Charter. It is our contention that government must support initiatives from organizations within the voluntary sector which have the capacity to advance the interests of social development vis-a-vis the Charter.

Lastly, we agree with the recommendations of other witnesses concerning the need for the Federal government to establish a COURT CHALLENGES or LITIGATION FUND to assist special interest groups and organizations to undertake test cases concerning Charter based rights.

CONCLUSION

It is important that the Federal government takes an ACTIVE LEADERSHIP ROLE to ensure equality rights for all Canadians. We have argued that this role should encompas areas such as monitoring the distributive effects of its own policies and programs, being an advocate for the full public consideration and implementation of earlier Federal reports and commissions which have consulted the public on directions to be taken; and supporting organizations, programs and initiatives in the community sector which are geared to informing and involving citizens on their rights as defined in the Charter.

SPECIFIC RECOMMENDATIONS

The Federal Government should:

Educational Systems

1. **ENCOURAGE** and support initiatives in school systems which educate students to the difference between 'sex' and 'gender', and counter gender stereotyping.

Age Discrimination

2. **SUPPORT** extensive public education about Aging as a means of teaching citizens the reality of what it means to grow older and building up a more positive attitude to people over 65.

3. **IMPLEMENT** the 1979 Senante Comittee recommendations regarding Mandatory Retirement.

4. **MAKE** Income tax changes to eliminate regressive tax exemptions that do little to help low income earners. And a realignment of the tax structure to ensure that those who have higher incomes pay progressively more tax, so that the burden doesn't continue to fall on the 42% of seniors who are under the poverty line.

5. **INTRODUCE** pension reform, particularly with regard to women and pensions. In this respect, the Senate Committee recommendations should be implemented.

6. **PAY BENEFITS** from unemployment insurance to people over 65 if they are laid off their job, but are still part of the work force.

Immigration

7. **AMEND** the Immigration Act to add age and disability as outlined in Section 15 of the Charter to its non-discriminatory grounds for the family class, assisted relative, and refugee categories.

   Families should not be denied immigrant status because they have a handicapped member of the family nor should the family be landed while the handicapped member remains on a Minister's Permit.

8. **BROADEN** The definition of "family" and "marital" status to reflect culturally diverse definitions.

9. **REVIEW** the point system in light of Charter implications and possible systemic discrimination (for example. disadvantages for women, certain age groups).

10. **CONSIDER** the sponsored party to be an equal partner and be granted equal rights.

    The sponsored party should therefore be involved in the sponsorship contract and should be made aware of their rights.

11. **ALLOW** in the event that sponsorship breaks down, the sponsored immigrant to be eligible to receive social assistance and assisted rental housing, based on need without immigration authorities providing a written authorization.

12. **GRANT** landed status on humanitarian grounds to abused sponsored spouses.

13. **ALLOW** fathers of illegitimate children to sponsor their children in the same way that mothers are allowed to do so now.

14. **REVIEW** the Domestic Worker Program in the light of Charter implications.

15. **CONDUCT** a review of the concept of refugee intake levels in order to assess its validity in light of equality rights (allocation of resources, possible racial, ethnic and national bias, and humanitarian and international commitments).

Sex Discrimination

16. **ACT TO ELIMINATE** unjustified discrimination based on grounds not enumerated in Section 15 of the Charter. We hold the view that Section 15 should extend its protection on an equal basis to all people in Cananda.

On-Going Dialogue

17. **ENCOURAGE** and support establishment, development and programs of community-based organizations concerned with the constitution and social development. Such organizations could provide advice to governments, as well as carry out necessary functions related to public education and the constitution - such as informing citizens of their rights and freedoms, how the Charter relates to these rights and freedoms, and how the Charter may be an instrument for greater democracy and social justice. The public requires wider access to the provisions and protections of the Charter of Rights and Freedoms.

Greater Access to Resources

18. **MAKE** funds available to community organizations for litigation in matters which relate to social development issues and the Charter of Rights and Freedoms. We support the concept that the Federal Government establish a 'litigation fund' to enable community organizations to bring relevant and important cases regarding equality rights before the courts.